IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. A. No. 577- SB of 1995
Date of Decision. March 28,2007.

Kuldip Singh and others .....Appellants

Versus

State of Punjab ..Respondent

PRESENT Mr. R. K. Battas, Sr. Advocate
with Mr. Raman Mohinder, Advocate
for the appellants.
Mr. Ashutosh Hoshiarpuri, AAG, Punjab.

CORAM HON'BLE MR. JUSTICE MAHESH GROVER

MAHESH GROVER , J (Oral)

The appellants were convicted for having committed an offence under Section 307 / 148 / 149 of the Indian Penal Code and sentenced to under-go rigorous imprisonment for four years and to pay a fine of Rs.2,000/- each and in default of payment of fine, it was directed that they would undergo further rigorous imprisonment for a period of six months. Appellant no.1, Kuldip Singh is the father of Hakam Singh, Shubjit Singh and Darshan Singh arrayed as appellants no.2,3 and 4.

The prosecution case in brief is that on 9.7.1992 , the accused persons had gathered near his fields and Hakam Singh is said to have fired a gun shot hitting the complainant and causing injuries to him.

It was stated in the FIR, registered at the behest of Bakshish Singh that he has 300 bighas of land being cultivated by Bhupinder Singh son of Harjagdev Singh. He along-with his brother's son Channa Singh had gone to the fields for the purpose of supervising them and when they reached near the bore of the tubewell of Tibiwall well, they

found Hakam Singh, Shubjit Singh, Darshan Singh sons of Kuldip Singh, Kuldip Singh son of Joginder Singh, Kulwant Singh son of Shiam Singh and Pritam Singh son of Harnek Singh residents of village Ballian hiding behind a heap of bricks. It was about 2 PM at that time. Kuldip Singh raised a lalkara saying that Bakshish Singh should not be spared, upon which Hakam Singh fired a shot which hit the complainant on his back and left leg. He tried to flee, upon which two more shots were alleged to have been fired by said Hakam Singh. The complainant and Channa Singh raised an alarm which attracted Jassa Singh to the spot. The other accused persons who were present and armed with Sotis kept on exhorting Hakam Singh by saying that Bakshish Singh was trying to get the allotment cancelled and had filed several cases in Court in connection with the surplus land , therefore, they should teach him a lesson. The complainant Bakshish Singh and Channa Singh managed to save themselves by running away from the spot.

On the aforesaid statement, a case under Section 307, 148, 149 of the Indian Penal Code and Section 25 of the Arms Act was registered vide FIR No. 89 dated 9.7.1992.

The police after investigating the matter submitted a challan under the provisions of Section 173 of the Code of Criminal Procedure against Kuldip Singh, Shub-jit Singh and Pritam Singh. While Hakam Singh, Darshan Singh and Kulwant Singh who were placed in column no.2 were summoned under Section 319 Cr. P. C and then the trial Court went on to frame charge against all the accused under Sections 148, 307 and 149 of the Indian Penal Code to which they pleaded not guilty and claimed trial.

The appellants took up the plea of false implication.

All the accused persons thereafter faced the trial. Prosecution in order to establish its case examined a number of witnesses

and the trial Court after perusing the entire evidence adduced before it, sentenced and convicted the appellants, the details of which have been given above in the foregoing paras.

The aforesaid sentence and conviction awarded to the appellants vide order dated 28.8.1995 have been assailed by the appellants by way of the present appeal.

At the outset it was contended by the learned counsel for the appellants that having regard to the injuries, it is apparent that one shot was fired with a .12 bore gun which according to the testimony of the complainant PW3 was fired by Hakam Singh. The shot was alleged to have been fired from a distance of 25 karams which is also fortified by the site-plan Ex. PW6/A and the plan which was prepared according to the scale which is on record as mark B. Considering the fact that the shot was fired from a distance it could not be said that there was an intention to cause death and that at best, the offence could be said to have been under Section 324 of the Indian Penal Code.

In so far as the other appellants are concerned, they were only attributed lalkara and even though they were armed with Sotis, no attempt was made by them to cause any injury to the complainant and his companion. Their presence on the spot also becomes doubtful keeping in view the deep rooted litigation pending between the parties which is also reflected from the FIR lodged at the behest of Bakshish Singh.

On the strength of the aforesaid contention, it was sought to be pleaded that at best the conviction of Hakam Singh could be under Section 324 IPC while the rest of the appellants deserve to be acquitted as there was hardly any evidence against them and that no injuries or role had been attributed to them except for making the exhortations.

On the other hand learned counsel for the State

contended that the conviction and sentence awarded to the appellants were perfectly in order as a gun was used without any apparent provocation and the fact that the persons had been lying in wait shows the pre-meditative intent to commit the offence.

I have heard the learned counsel for the parties and have perused the record.

The injuries on the person of the complainant Bakshish Singh have been elaborately reflected in the statement of PW1 Dr. N. M. Bhalla which are as follows:-

> " 1. *There were multiple lacerated wounds 0.5 cm x 0.25 cm and 0.25 cm x .25 cm in size on the posterior aspect of left knee joint. The wounds covered an area of 10 cm diameter over left politia fossa. X-ray was advised.*
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> *2. There was a lacerated wound 0.5 cm x 0.25 cm on the back 12 cm posterior to anterior superior iliac spine. A metalic piece was recovered from the wound and handed over to the police.*
>
> *3. A lacerated wound 0.5 cm x 0.25 cm on the right side of back at lower end of chest. 9 cm right of middle line and 23 cm below lip of right shoulder. X-ray was advised.*

The said witness went on to say that the injuries could have been caused by a fire arm but has also opined that they were simple in nature.

A perusal of the aforesaid injuries leaves very little room to doubt the opinion as expressed by the aforesaid witness requiring the use of a fire arm as all the wounds are consistent in size and shape which could have only been caused by a spray of pellets. No other weapon of offence could have caused such consistent sized wounds.

There is thus , little hesitation to hold that a fire arm was used in the commission of the offence.

Injured Bakshish Singh is categoric in his testimony that the shot was fired by Hakam Singh. Hakam Singh was accompanied by his father Kuldip Singh his brothers and a few others. There was no reason why this witness would choose Hakam Singh to attribute the gun shot to him to the exclusion of all others.

The investigating agency, however, seems to have tried to improve the version by attributing the shot to Kuldip Singh for the reason that the licenced gun apparently belong to him.

There is thus no escape from the conclusion that Hakam Singh was the person who fired the shot to cause injuries on the person of Bakshish Singh.

The question now that has to be examined is as to whether the use of the gun was with the pre-meditative intent to cause the death of the complainant or that it was within the intent to cause injuries with a weapon, use of which is likely to cause death.

Division Bench of this Court in ***Gurmukh Singh v. State of Punjab 1975 (1) LLR P&H 502*** has observed as follows-

> *" Held, that Section 307,Indian Penal Code , provides that person shall be deemed to have committed an offence of attempt to murder if he does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. In order that an accused person may be held guilty of the offence of an attempt to commit murder under Section 307, IPC, the prosecution must show that the act done by the accused was done with such intention or knowledge and under such circumstances that if by that act he caused death, he would be convicted for offence under Section 302. However, if the act has been fully carried into effect, the question of intention or knowledge is to be inferred from the result. If the act is complete and yet it does*

not cause death not because of any supervening or intervening circumstances but it failed because of the inherent infirmity present in it of its inability or lack of strength to bring about the result of death, the person committing the act can neither be said to have the intention nor the knowledge to cause the death.

Held, that where an accused person fires a gun from distance and the shot strikes the victim on the chest but does not cause his death, the accused cannot be said to have the requisite intention or knowledge to cause the death of his victim. The act of firing does not result in causing the death of the victim, because of the short coming or ineffectiveness of the act and not because of any intervening circumstances beyond the control of the accused inspite of the act done by him being effective in causing the death. The intention in the mind of a person is something abstract. It is difficult to probe into its existence or nature by any direct evidence. It has to be inferred from the conduct of the person cherishing it. The existence of knowledge is awareness of the mind about the facts pertaining to an act and its result or consequence. Taking into consideration the distance from which the accused fires at his victims and also the nature of missile of pellets employed by him in firing, the inference drawable is one of the accused possessing neither the intention nor the knowledge to cause death of his victims and hence he is not guilty of an offence under Section 307 of the Code.

Concededly, a persual of the statement of Bakshish Singh shows that the shot was fired from a distance of 25 karams and coupled with the evidence on record in the shape of the site plan (rough as well as with the scale) Ex. PW6/A and mark B shows that the distance was about 31 karams which is clearly reflective of the fact that shot fired from that distance could not possibly have resulted in death of the injured. This coupled with the fact that the injury was caused in the leg and the lower back also rules out the possibility of using the weapon with an

intention to cause the death of the injured.

In the given set of circumstances, I deem it appropriate to hold that Hakam Singh is clearly guilty of having committed an offence under Section 324 of the Indian Penal Code and deserves to be convicted accordingly. Since a fire arm had been used, it could be just appropriate to sentence him to undergo imprisonment for three years.

In so far as the case of the other appellants are concerned, Bakshish Singh in his testimony has only named Kuldip Singh as a person who raised a lalkara. The other persons have not been named in his testimony. There is no cogent evidence on record to justify their conviction. Consequently except for Kuldip Singh who apparently shared the common intention to cause the aforesaid injury along-with his son Hakam Singh, the others namely Shub Jit Singh, Darshan Singh, Pritam Singh and Kulwant Singh apparently have been implicated as a result of the previous animosity on account of the earlier litigation. Kuldip Singh is also accordingly convicted and sentenced under the provisions of Section 324 read with Section 34 of the Indian Penal Code and is sentenced to an imprisonment of one year while the others are acquitted by giving them the benefit of doubt.

At this stage, learned counsel for the appellants has made an impassioned plea that the appellant Kuldip Singh was aged about 60 years at the time when offence was committed and Hakam Singh was aged 38 years. The appeal is of the year 1995 and to send them to face the rigors of conviction after lapse of 12 years would be extremely harsh. Besides appellant Kuldip Singh has undergone four months in custody while Hakam Singh is said to have undergone more than eleven months.

I have carefully considered the aforesaid contention raised by the learned counsel for the appellants. The backdrop of the

incident, is a deep rooted litigation between the parties. The appellant Kuldip Singh was aged 60 years at the time when the offence was committed. He would now be in the evening of his life. Appellant Hakam Singh would also be fairly advanced in age after all these years. Hence, considering the fact that they are fairly advanced in age, as also the fact that they are said to have undergone 11 months and 4 ½ months in custody respectively, as also the fact that the injury caused was simple and the fact that there was some litigation pending between the parties resulting in animosity , I deem it appropriate to reduce the sentence to already undergone, provided the appellants deposit a sum of Rs. 25,000/- as compensation to be given to the injured Bakshish Singh. The aforesaid amount be deposited before the trial Court within a period of three months from today for onward disbursement to the injured Bakshish Singh.

It is made clear that in case the compensation, aforesaid, is not deposited within the stipulated period, the sentence so awarded by this Court shall be operative and in that eventuality, the bail-bonds of the appellants Hakam Singh and Kuldip Singh will be cancelled forthwith.

Disposed of as aforesaid.

March 28, 2007 **(MAHESH GROVER)**
mamta **JUDGE**